IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

WP(C).No. 28583 of 2007(C)

OS.1102/2005 OF II ADDL.MUNSIFF COURT., ERNAKULAM.
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PETITIONER:

CHARLY C.VARGHESE,
S/O.VARGHESE, AGED 33 YEARS,
MOOLAKKATTU HOUSE, OOTHIKKARA,
PALLIKKARA, KUMARAPURAM, ALWAYE.

BY ADV. SRI.PAUL K.VARGHESE

RESPONDENTS:
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1. T.M. ABUBACKER,
S/O. MARAKKAR, AGED 43 YEARS,
THAZHATHAN HOUSE, OOTHIKKARA,
PALLIKKARA, KUMARAPURAM, ALWAYE.

2. THE SECRETARY,
DISTRICT PANCHAYAT'S OFFICE,
CIVIL STATION, KAKKANAD.

BY ADV. SRI. JOY JOSEPH.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.28583 OF 2007

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Dated this the 27th day of September 2007

JUDGMENT

This writ petition is preferred against the order of the II Addl.Munsiff's Court, Ernakulam whereby he refused to issue a cheque as prayed for on the ground that the court's jurisdiction has ceased off when the award is passed by the Adalath and therefore petition to be filed for execution of the award. Learned counsel for the petitioner as well as the respondent had submitted that there has been substantial and full compliance of the terms of the compromise and therefore the terms of the compromise can be implemented and respected. During the pendency of the proceedings, there was a garnishee proceedings and the garnishee has deposited Rs.1 lakh before the trial court. As per the terms of the compromise the defendant has agreed that the plaintiff can realise the amount of Rs.1 lakh deposited by the garnishee and further that the defendant agrees that the plaintiff has right to realise the said amount. So the entitlement of the plaintiff to have Rs.1 lakh furnished by the garnishee is very clear from the terms of the compromise. The purport of the Legal Service Authorities Act has to be taken into consideration in the right

direction and technicalities shall not be a ground for rejecting the prayers. For example, in a suit, an amount is deposited and ultimately a compromise is filed between the parties, wherein one of the parties is permitted to withdraw the amount, I think by filing an interlocutory application or execution application, the party can withdraw that amount, since it is for issuance of a cheque. This is what is precisely done by the plaintiff in the case. The court below should not have dismissed it on the technical ground that an application for execution be filed and then a prayer has to be made to withdraw the amount. When the parties agree and admittedly the amount belongs to the plaintiff, then the court instead of technically rejecting the application should have issued the cheque.

Therefore I direct the court below to restore the I.A. and issue the cheque to the petitioner for the reason that there is no objection for the defendant. So far as the court fee is concerned, the court may issue a certificate to the plaintiff to receive the amount from the Collector. This may be done as expeditiously as possible.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-